

REMARKS

In response to the Final Office Action mailed on June 19, 2008, Applicants respectfully requests reconsideration.

Claims 1, 4-7, 11-15, 19, 22-25, 29, 32-35 and 37-38 are pending in this Application. Claims 1, 11, 19 and 29 have been amended. Claims 1, 11, 19 and 29 are independent claims and the remaining claims are dependent claims. A version of the claims is included hereinabove. Applicants believe that the claims as presented are in condition for allowance. A notice to this affect is respectfully requested.

The Examiner rejected claims 1, 4-7, 11-15, 19, 22-25, 29, 32-35 and 37-38 as being unpatentable over U.S. Patent No. 6,891,802 to Hubbard (hereinafter Hubbard), and U.S. Patent No. 6,137,782 to Sharon et al. (hereinafter Sharon) and further in view of U.S. Patent No. 6,684,387 to Acker et al. (hereinafter Acker).

First of all, applicants submit that the combination of Hubbard, Acker and Sharon is improper. The Examiner cannot use the claim elements as a mere “shopping list” and find a piece of prior art for each claim element and combine them to make an argument that the claim is obvious. Recent court decisions enforce this.

When it first established the requirement of demonstrating a teaching, suggestion, or motivation to combine known elements in order to show that the combination is obvious, the Court of Customs and Patent Appeals captured a helpful insight. See *Application of Bergel*, 292 F. 2d 955, 956–957 (1961). As is clear from cases such as *Adams*, **a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.** Although common sense directs one to look with care at a patent application that Claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the

relevant field to combine the elements in the way the Claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and Claimed discoveries almost of necessity will be combinations of what, in some sense, is already known. [Emphasis added] *KSR*, 82 USPQ2d at 1396. Thus, the Examiner cannot use the claim elements as a mere “shopping list” and find a piece of prior art for each claim element.

Further, regarding claims 1 and 19, neither Hubbard, Acker nor Sharon disclose or suggest providing load to an object oriented software component usable to build an application. Hubbard describes testing of a network site, whereas Acker discloses “functional” testing of a software component (but not load testing). As described in the specification as filed on page 2 lines 18-25, load comprises providing a predetermined number of virtual users which perform a variety of functions or transactions with the target being tested. Thus, the load does not perform mere “functional” testing as presented in Acker, but uses a number of virtual users to load test the target to determine the response of the target when multiple users are simultaneously accessing the target. Claims 1 and 19 have been amended to recite the same. Therefore since Hubbard and Acker should not be combined and further, if one were to theoretically combine the references, since Hubbard describes testing a web site while Acker describes functional testing of a software component, neither Hubbard nor Acker (nor Sharon), taken alone or in combination, disclose or suggest providing load to a software component usable to build an application as claimed by Applicant. Therefore, claims 1 and 19 are believed allowable. Claims 4-7, 22-25, 37 and 38 depend from claims 1 or 19 and are believed allowable for at least the same reasons as claims 1 or 19. Accordingly, the rejection of claims 1, 4-7, 11, 22-25, 37 and 38 is believed to have been overcome.

Further still, regarding claims 11 and 29, neither Hubbard, Acker nor Sharon disclose or suggest performing distributed monitoring of an object oriented software component usable to build an application. Hubbard describes

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testing of a network site, whereas Acker discloses “functional” testing of a software component (but not load testing). As described in the specification as filed on page 4 lines 11-17, monitoring comprises provide testing of deployed targets in order to detect and report performance problems. Monitoring software may be e-Monitor® available from Empirix Inc. of Waltham, Massachusetts. The monitoring provided by the systems report failures in real time. The monitor software may provide a variety of notification options and corrective actions to allow the target owner to quickly resolve any problems. Claims 11 and 29 have been amended to recite the same. Thus, the monitoring does not perform mere “functional” testing as presented in Acker, but instead tests targets to detect and report performance issues as well as provide notification options and corrective actions. Therefore since Hubbard and Acker should not be combined and further, if one were to theoretically combine the references, since Hubbard describes testing a web site while Acker describes functional testing of a software component, neither Hubbard nor Acker (nor Sharon), taken alone or in combination, disclose or suggest providing monitoring to a software component usable to build an application as claimed by Applicants. Therefore, claims 11 and 29 are believed allowable. Claims 12-15 and 32-25 from claims 11 or 29 and are believed allowable for at least the same reasons as claims 1 or 19. Accordingly, the rejection of claims 1, 4-7, 11, 22-25, 37 and 38 is believed to have been overcome.

In view of the above, the Examiner’s rejections are believed to have been overcome placing the pending claims in condition for allowance and reconsideration and allowance thereof is respectfully requested.

Applicants hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,

/DWR/

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